

## CONSULTANT SERVICE AGREEMENT

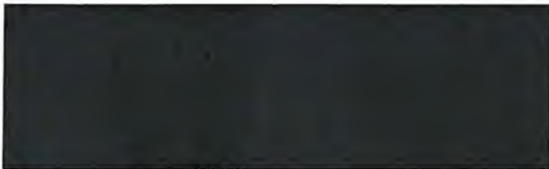
This Consultant Service Agreement is made on October 13, 2008

between

**VA TECH Escher Wyss S.A. de C.V.**  
Avenida Ciudad Industrial 977  
58200 Morelia, Mich., Mexico

herein called **HMX**

and



Florida - USA

herein called the **CONSULTANT**

on the other hand

Hereinafter referred to individually as a "Party" and collectively as the "Parties".

### 0 Introduction

- 0.1 Whereas HMX is a well-known group of international companies in the branch of hydro power generation,
- 0.2 Whereas the CONSULTANT has since years very many intensive business contacts into the Venezuelan market,
- 0.3 Whereas a number of factors such as the complexity of the Venezuelan market, the business culture of customer organisations, customer procurement practices and influencing factors in the customer procurement process, and the variety of products and services supplied by HMX make it desirable to supplement the direct efforts of HMX.

Now, therefore, the Parties hereby conclude the following agreement (the "Consultant Service Agreement"):



## 1.0 Scope of Activities

- 1.1 The CONSULTANT shall assist HMX in its activities in the Venezuelan market and pursue in particular HMX 's interest in securing the contract(s) for the Replacement of the Excitation Systems for all 10 Units of the GURI II Hydroelectric Project in Venezuela (hereinafter called "the Project") and with the performance of the Contract(s) related to this equipment (hereinafter called the "Contract") with EDELCA – hereinafter called the "Customer" - for HMX on an exclusive basis.
- 1.2 In particular, the CONSULTANT shall, in close coordination with HMX, render the following services for the Project from EDELCA:
- provide detailed knowledge of local market customs and practices, customer organisations, and procurement regulations;
  - provide effective services promoting HMX and its products and services
  - achieve the Contract for the Guri II Excitation Systems by assisting the negotiations on the best possible terms and conditions and upon request during the performance of the Contract
  - achieving the financial closure of the Project
  - interpret and communicate customer needs and requirements for HMX 's products
  - provide a local presence and assistance and, when required, a continuing interface with customer organisations
  - identify and define sales opportunities and provide market intelligence
  - conduct inquiries, support negotiations, and obtain specifications
  - provide post - contract liaison and
  - provide strategic marketing planning assistance.
- 1.3. In general HMX requires and the CONSULTANT agrees to provide in addition to the above mentioned activities, general information, which are likely to or shall become subject to the provisions of the CONSULTANT. The CONSULTANT shall provide information to HMX on a regular basis, in written simple form, describing his activities for the Project.
- 1.4 Where required the scope of the activities to be provided by the CONSULTANT may be extended by mutual written agreement between the CONSULTANT and HMX and any variations to the Consultant Service Agreement can be made at relevant times.

## 2.0 Exclusivity

This Consultant Service Agreement is limited to the Project, and the CONSULTANT shall perform the services described herein exclusively for HMX and its associates in the Project. The CONSULTANT shall not, either directly or indirectly, advise, assist or provide information on the Project to any other company or organisation.

## 3.0 Status of CONSULTANT

- 3.1 The CONSULTANT shall not represent itself as an agent of HMX, or as to be authorised to assume or create any obligation of any kind, expressed or implied, on behalf of HMX or any of its affiliates or to bind them in any respect whatsoever. The CONSULTANT shall have no power to pledge HMX 's credit nor any right or power to enter into any contract on behalf of nor to bind HMX and any of its affiliates in any respect. In dealing with a Customer, the CONSULTANT shall ensure that the foregoing limits relating to its authority are understood by the Customer.

- 3.2 The CONSULTANT shall be deemed at all times to be an independent contractor and nothing contained herein shall be deemed to create the relationship of employer and employee, partnership or joint venture between the CONSULTANT and HMX.

#### 4.0 Compensation and Remuneration

- 4.1 For the Project being awarded to HMX an in case of acceptance of HMX's proposal, HMX shall pay to the CONSULTANT a fixed lump sum remuneration. In this case the remuneration shall be four point zero (4,0 %) percent of the total Contract Value corresponding to HMX 's supply and services of the Project, without VAT, import tax (nationalization), contract fee and provisional sum. HMX's supply means the part of the Contract with the Client which will be assigned to HMX. The part of the Contract which is covered by other consortium members will not be considered under this Agreement.


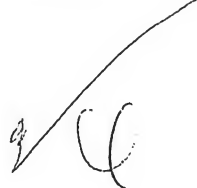
- 4.2 Thirty percent of the remuneration (30,0 %) due under Clause 4.1 above shall be paid as Payment 1 by HMX to the CONSULTANT, within 60 calendar days after the award of the Project to HMX and the coming into force of the signed contract for the Project or part thereof, evidenced by financial closure of the Project and payment of any down payment(s). The remaining sum will be paid on a pro rata basis of the payments received by HMX from the Customer for the Project, however, within 4 weeks at the latest after receipt of the respective payment by HMX in the following way:

Payment 2: 15 % (fifteen percent) of the remuneration	6 months after receipt of the first progress payment
Payment 3: 15 % (fifteen percent) of the remuneration	12 months after Payment 1
Payment 4: 15 % (fifteen percent) of the remuneration	18 months after Payment 1
Payment 5: 15 % (fifteen percent) of the remuneration	24 months after Payment 1
Payment 6: 10,0 % (ten percent) of remuneration	at the time of PAC Unit 10

- 4.2 Payments for adders and change orders will be done at the time when HMX receives the respective payment from the Customer. The respective remuneration will be subject to a separate agreement between the Parties.
- 4.3 The CONSULTANT is entitled to a Remuneration on orders that have been brought to a definite conclusion during the validity of this Agreement. An order is considered as having been concluded when all formalities commented herewith have been duly fulfilled and the first payment has actually been received by HMX.

If an order is cancelled by the Customer, then the CONSULTANT is only entitled to a Remuneration if the Contract in question can be liquidated without loss to HMX and moreover only on the payments of the Customer actually remaining with HMX.

- 4.4 The above mentioned Remuneration shall be paid to the bank account(s) in accordance with Annex 1
- 4.5 Cash payment of the remuneration shall not be made.
- 4.6 Both Parties agree to bear their own costs in pursuing the Project.
- 4.7 This agreement is the only one between HMX and CONSULTANT which defines the obligations related to the Project and replaces the stipulations of the corresponding agreement related to the main contract of the Replacement of the Excitation Systems for all 10 Units of the GURI II Hydroelectric Project.

 HMX 

## 5.0 Representations and Covenants

- 5.1 During the term of the Consultant Service Agreement, the CONSULTANT shall not promote the interests of any competitor of HMX and their Companies with respect to the hydraulic Project mentioned above in the Scope of activities (Enclosure 1) and shall not act as intermediary for or distribute competing products relating to the Project. In any way the CONSULTANT shall avoid any real or perceived situation(s) where a conflict of interest could arise, and if such situations do arise, he will immediately inform HMX of the pertinent circumstances and facts.
- 5.2 The CONSULTANT represents that it will not make, authorize, offer or promise to make any loan, gift, donation or payment, or transfer of any thing of value, directly or indirectly, to any foreign official, or foreign political party or any employee of any company in order to facilitate the award of above mentioned Project to HMX.

## 6.0 Confidentiality

- 6.1 The CONSULTANT and HMX agree that each Party and their employees, agents, successors and any related or connected parties shall keep the terms of the Consultant Service Agreement strictly confidential and shall not reveal the contents, circumstances, services or any other material facts of the Consultant Service Agreement to any third party without the express and prior written consent of the affected Party, unless it is necessary for execution of the agreement like opening of bank accounts, tax authorities etc..
- 6.2 The CONSULTANT, HMX and their employees, agents, successors and any related or connected parties, agree that any and all data, drawings, reports specifications, plans or any other information in any form, including sources of such information, provided by HMX to the CONSULTANT and vice versa, shall be regarded as secret information and shall not be revealed, disclosed, published or shall not cause or authorise others to reveal, disclose or publish the said information.
- 6.3 The confidentiality obligations above shall survive the Consultant Service Agreement for a period of five (5) years.

## 7.0 Term

- 7.1 The Consultant Service Agreement shall commence on the date of signature by both Parties, and shall end on one of the following events:
- final completion of all matters associated with the execution of the Project, or
  - an official declaration or equivalent statement to the effect that the Project will not be implemented, or
  - that HMX will not be entrusted with the implementation before Dec. 31. 2010, or
  - bankruptcy of one of the Parties
- whichever comes first.
- 7.2 The validity of this Agreement may be extended by the mutual written consent of HMX and the CONSULTANT.

 HMX 

- 7.3 If the Contract has not come into force within the above mentioned validity period, the Consultant Service Agreement shall be deemed to be null and void and neither Party shall be entitled to any Remuneration whatsoever from the other Party.
- 7.4 HMX and the CONSULTANT may mutually agree to terminate the Consultant Service Agreement at any time.
- 7.5 When the Consultant Service Agreement will end or will be terminated, Remuneration payments as agreed under Clause 4.1 above shall remain payable, if due within a period of six (6) months after the date of termination or end of this Agreement..

## 8.0 Limitation of Liability

In no event shall either Party hereto be liable to the other Party for any special, indirect, consequential or incidental damages, including but not limited to loss of profits or revenues, cost of capital, cost of substitute products, loss of reduction of use of product or down time costs.

## 9.0 Amendments, Effectiveness

- 9.1 Amendments and Additions to the Consultant Service Agreement or its termination must be made in writing. This also applies to an agreement revoking the aforementioned requirements of written form.
- 9.2 The invalidity of any provision of the Consultant Service Agreement shall not affect the validity of the remaining provisions. If any of the provisions should prove to be ineffective, the Parties will replace it by a new one coming as close as possible to the intended economical benefit. The same applies to the bridging of any gaps in the Consultant Service Agreement.

## 10.0 Arbitration

- 10.1 Any differences or disputes arising from this Contract or from this Consultant Service Agreement regarding its performance shall be settled by an amicable effort on the part of both Parties. An attempt to arrive at a settlement shall be deemed to have failed as soon as one Party so notifies the other Party in writing.
- 10.2 If an attempt to settle the difference(s) has failed, including any questions regarding its existence, validity or termination, the dispute(s) shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce, Paris by three arbitrators appointed in accordance with such Rules.
- 10.3 The venue of arbitration shall be Zurich, Switzerland. The procedural law of this place shall apply where the Rules are silent.
- 10.4 The language to be used in the arbitration proceedings shall be English.

## 11.0 Substantive Law

All disputes shall be settled in accordance with the provisions of this Consultant Service Agreement and all other agreements regarding its performance, otherwise in accordance with the substantive law in force in Germany without reference to any other laws.



## 12.0 Assignment

The CONSULTANT shall not assign any of its rights of obligations under the Consultant Service Agreement or any portion of its rights of obligations there under (including payments due or to become due) to any subagent, affiliate or any other third party without the express written consent of HMX.

## 13.0 Final Agreement

This Consultant Service Agreement supersedes and cancels any former agreement(s) between the Parties hereto relating to the appointment of the CONSULTANT with regard to the Project

The Parties agree that the Remuneration to the CONSULTANT will be made by direct payment from each member of HMX.

For VA TECH Escher Wyss S.A. de C.V.



Date: 13<sup>th</sup> October 2008

For and on behalf of  
the CONSULTANT



Date: 13<sup>th</sup> October 2008

ANNEX 1 – Bank accounts